

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case
DEE ODELIA GANGESTAD,) No. 05-72726-aer7
Debtor.) MEMORANDUM OPINION

This matter comes before the court on the Chapter 7 Trustee's (Trustee) objection to OSU Federal Credit Union's (OSU) proof of claim #1. After hearing, the parties submitted briefs and have submitted the matter on the record.

Facts:

The following facts are undisputed:

Debtor filed her Chapter 7 petition, herein, on October 14, 2005.¹ OSU is secured in a 1998 Chevy Blazer (the vehicle). This is an asset case with a likely distribution to general unsecured creditors. OSU has filed proof of claim #1 for \$9,991.85. of which \$7,787.00 is

¹ The filing was before the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub.L. No. 109-8, 119 Stat. 23 (2005). As such, pre-BAPCPA law applies.

1 claimed as secured representing the vehicle's value, and \$2,204.85 is
2 claimed as general unsecured, representing the undersecured portion of
3 the claim. Trustee has not yet abandoned the vehicle. Debtor has
4 continued to pay the current installments due on the debt to OSU under a
5 "ride-through."² OSU has not released any portion of its lien and will
6 not do so until the debt is paid in full. To the extent OSU receives a
7 dividend from the Chapter 7 estate on its unsecured claim, it will credit
8 the unpaid balance due. Debtor received her discharge on February 13,
9 2006.

10 Issues

11 Trustee contends that OSU's claim should be treated as fully
12 secured and that OSU should not share in any distribution from the estate
13 to general unsecured creditors. Trustee argues that since OSU has not
14 released its lien to the extent of the undersecured portion of the debt,
15 it should be estopped from asserting an undersecured claim against the
16 estate. He argues that the vehicle must be liquidated in order for OSU
17 to have an unsecured claim in the bankruptcy.³

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20 ² See, McClellan Federal Credit Union v. Parker (*In Re Parker*), 139 F.3d
21 668 (9th Cir. 1998) (interpreting pre-BAPCPA § 521(2), holding, debtor need not
22 reaffirm or redeem in order to retain collateral, so long as the contract is
not in default).

23 ³ Trustee also indicates that collecting the full amount of the debt on
24 these facts amounts to a de facto reaffirmation and a violation of the
25 discharge injunction. To the extent it is relevant to the matter before the
court, Trustee has no standing to allege a discharge violation. The discharge
injunction of § 524(a) protects the Debtor, not the estate. Further, as
26 discussed below, OSU's refusal to release its lien on the undersecured portion
of the debt, does not implicate the discharge, but rather goes to its post-
petition lien rights.

1 OSU maintains that 11 U.S.C. § 506(a)(1)'s⁴ bifurcation provision
2 is applicable. It does not require liquidation of the vehicle.

3 Based on the following discussion, this court rejects Trustee's
4 arguments.

5 Discussion

6 Trustee does not specify what type of "estoppel" he is relying
7 upon. There are three main types of estoppel, judicial, collateral and
8 equitable.

9 In order to make out a case for judicial estoppel, the trustee
10 would have to establish that OSU has previously prevailed, by taking a
11 contrary position in another judicial proceeding. Hamilton v. State Farm
12 Fire & Cas. Co., 270 F.3d 778, 782-783 (9th Cir. 2001). Here, no court
13 has been involved in OSU's decision not to release its lien. Trustee has
14 not argued that OSU has previously taken a contrary position in a
15 different legal proceeding.

16 In a similar vein, collateral estoppel, (i.e., issue preclusion),
17 requires a final decision by an adjudicative body on the merits. Silva
18 v. Smith's Pacific Shrimp, Inc., (*In re Silva*), 190 B.R. 889, 892 (9th
19 Cir. B.A.P. (E.D. Wa.) 1995). Once again, there does not appear to be
20 any prior judicial proceedings involving OSU, Trustee or their privies.

21 Finally, equitable estoppel requires that there be conduct by one
22 party (OSU) on which the other party (Trustee) relied to its detriment,
23 such that OSU should be estopped to change its position. Here, Trustee
24 can point to no detrimental reliance. Further, OSU's position about its
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26 ⁴ Unless otherwise indicated, all subsequent statutory references are to
Title 11 of the United States Code.

1 decision not to release its lien has been consistent throughout this
2 bankruptcy proceeding.

3 The trustee's argument that the vehicle must be liquidated as a
4 condition precedent for OSU to have an allowed unsecured claim is
5 likewise without merit. Bifurcation of OSU's claim occurs automatically
6 by operation of law. § 506(a)(1)⁵. The bifurcation depends on the value
7 of the collateral. When, as here, the value of the collateral is less
8 than the amount of the creditor's claim, the claim is bifurcated into a
9 secured and an unsecured claim. As noted by the court in In re Costello,
10 184 BR 166, 171 (Bankr. M.D. Fla. 1995), a Chapter 7 case, "[t]here is no
11 requirement that the creditor first obtain a deficiency judgment in the
12 non-bankruptcy forum as a prerequisite for bifurcating a claim into a
13 secured and unsecured part."

14 Here, a sale by the estate is neither requested nor warranted.
15 There is admittedly no equity in the vehicle. Trustee would have no
16 reason to sell it. It is inevitable that the vehicle will eventually be

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18 ⁵ Section 506(a)(1) provides:

19 An allowed claim of a creditor secured by a lien on
20 property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a
21 secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

1 abandoned. Under Parker, as long as Debtor remains current in her
2 payments to OSU, OSU may not compel liquidation.

3 Trustee argues that OSU's refusal to release its lien on the
4 undersecured portion of the debt is an acknowledgment that the debt is
5 fully secured. This misconstrues the holding in Dewsnup v. Timm, 502
6 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992). There, the court
7 reaffirmed the general principle that liens pass through bankruptcy
8 unaffected. Specifically, it rejected a reading of § 506(d) which would
9 have allowed Chapter 7 debtors to strip-off the undersecured portion of a
10 lien. The Dewsnup court stated:

11 It is true that his [the undersecured creditor's]
12 participation in the bankruptcy results in his having the
13 benefit of an allowed unsecured claim as well as his
14 allowed secured claim. . . .

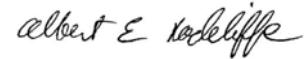
15 Id. at 418, 112 S.Ct. at 778, 116 L. Ed. 2d at 911.

16 Although neither party cites it, In re Mobley, 201 B.R. 851 (N.D.
17 Fla. 1996) could be read to support Trustee's position. There the court
18 disallowed an undersecured claim in a Chapter 7, where the debtor
19 reaffirmed the underlying debt and the creditor maintained its lien on
20 the full balance. To the extent Mobley's holding relied on the debtor
21 reaffirming the full debt, it is distinguishable from the ride-through at
22 issue here, where the debtor can surrender the vehicle at any instant,
23 without exposure to personal liability. Mobley also cites state
24 (Florida) law, holding that a secured creditor's collateral needs to be
25 liquidated before an undersecured "deficiency" may be allowed. Id. at
26

1 853. As discussed above, neither § 502(b)(1)⁶ nor § 506(a) compel such a
2 result in a bankruptcy proceeding.

3 Conclusion

4 Trustee's objection is overruled. OSU's proof of claim #1 is
5 allowed, including the amount of \$2,204.85 as a general unsecured claim.
6 An appropriate order will be entered. The above constitute the court's
7 findings of fact and conclusions of law under FRBP 7052. They shall not
8 be separately stated.

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11 ALBERT E. RADCLIFFE
12 Bankruptcy Judge
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18 ⁶ Section 502(b)(1) provides:

19 Except as provided in subsections (e)(2), (f), (g),
20 (h) and (i) of this section, if such objection to a claim
21 is made, the court, after notice and a hearing, shall
22 determine the amount of such claim in lawful currency of
the United States as of the date of the filing of the
petition, and shall allow such claim in such amount,
except to the extent that--

23 (1) such claim is unenforceable against the
24 debtor and property of the debtor, under any
agreement or applicable law for a reason other
than because such claim is contingent or
unmatured.

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26 Trustee cites no authority that OSU's claim is not allowable under
§ 502(b)(1).